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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,622	10/20/2003	Howard Tanner	23660-00610	4684

25243 7590 04/13/2007  
KELLEY DRYE & WARREN LLP  
3050 K STREET, NW  
SUITE 400  
WASHINGTON, DC 20007

EXAMINER
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WOO, JULIAN W

ART UNIT	PAPER NUMBER
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3731

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/13/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/687,622

Applicant(s)

TANNER ET AL.

Examiner

Julian W. Woo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 75-77 and 96-112 is/are pending in the application.
- 4a) Of the above claim(s) 106, 107, 111 and 112 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 75-77, 96-105 and 108-110 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 75-77, 96, 100-105, and 108-110 are rejected under 35 U.S.C. 102(b) as being anticipated by Marks (5,108,420). Marks discloses, at least in figures 6-9 and in col. 5, line 18 to col. 6, line 22; a fastener assembly including flexible fastening assembly including opposing first and second portions (62a, 62b) that are operable to secure a surgical component to a vessel via compressive force, where the fastening assembly is a spring assembly, which is a manipulated coil spring; where the first and second portions are extendable substantially parallel to a vessel wall, where the first and second portions comprise an axially wound or a radially wound portion, and where the first and second portions are disposed on a coil portion. Note: The introductory statement of intended use ("for use during a surgical procedure for securing a surgical component to a vessel") has been carefully considered but deemed not to impose any structural limitations on the claims patentably distinguishable over Marks' device, which is capable of being used as claimed if one desires to do so.

3. Claims 75 and 97-99 are rejected under 35 U.S.C. 102(e) as being anticipated by Fleischman et al. (6,132,438). Fleischman et al. disclose, at least in figures 29 and 31A-31C, a fastener assembly including flexible fastening assembly including opposing first and second portions (116, 117 or 116 and 126) that are operable to secure a surgical component to a vessel via a compressive force, where each of the first and second portions (116 or 117) is formable into a semi-knotted (i.e., looped) portion when compressed. If the second portion is deemed element 126, a suture, then element 126 is semi-knotted when attached to 117). Note: The introductory statement of intended use ("for use during a surgical procedure for securing a surgical component to a vessel") has been carefully considered but deemed not to impose any structural limitations on the claims patentably distinguishable over the device of Fleischman et al., which is capable of being used as claimed if one desires to do so.

***Response to Amendment***

4. The claim objections and the rejection under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, are hereby withdrawn.

The arguments regarding the rejections under 35 U.S.C. 102 have been fully considered, but they are not persuasive. With respect to arguments regarding the rejection based on the Marks reference: Marks discloses a "'relaxed' (preprogrammed) configuration" for the fastener assembly, which is simply a description of the shape of the fastener assembly as compared to its previous "straight wire" configuration. This description does not obviate the compressive feature of the device. The compressive feature is suggested by column 6, lines 16-23, which disclose that the helices, 62a and

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62b, are shaped to “urge the outermost coils of helices...toward the septal surface (and one another) to provide an increased frictional force between the helices and their respective septal surfaces.”

With respect to arguments regarding the rejection based on the reference of Fleischman et al.: The Applicant has pointed out that Fleischman et al. disclose an “arrangement” that “enables pulling of adjacent [appendage] walls together.” The portions of the anchor of Fleischman et al. exert this “pulling” force toward each other and toward the wall surfaces, thus producing a compressive force as claimed.

Moreover, the recitation that the “second portion” is “*operable* to secure a surgical component to a vessel via a compressive force” or that “a first portion and a second portion” are “*operable* to be drawn substantially together by applying a compressive force to secure a surgical component to a vessel” is not a positive limitation, but only requires the ability to so perform (emphasis mine). It does not constitute a limitation in any patentable sense. That is, the devices of Marks and Fleischman et al. are capable of securing a surgical component to a vessel. The septal surfaces disclosed by Marks and the appendage walls disclosed by Fleischman et al. are surfaces or structures analogous to the surfaces or structures of a surgical component and a vessel.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian W. Woo whose telephone number is 571-272-4707. The examiner can normally be reached on M-F, 6:30-4:00, Alt. Fri. OFF, 6:30-3:00 Fri. IN.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Julian W. Woo  
Primary Examiner  
Art Unit 3731

April 11, 2007